



PATENT APPLICATION
Docket No.: 11023.5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Darko Segota)	
Serial No.:	10/600,206)	Art Unit
Filed:	March 23, 2001)	3641
Title:	METHOD AND SYSTEM FOR REGULATING PRESSURE AND OPTIMIZING FLUID FLOW ABOUT A FUSELAGE SMILIAR BODY)	Conf. No.
Examiner:	Michael J. Carone)	9031

RESPONSE

Mail Stop: Response
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Greetings:

This correspondence is responsive to an office action mailed from the United States Patent and Trademark Office December 15, 2004, for the above-referenced case.

ELECTION

In the office action, the Examiner provided a restriction requirement. Applicant traverses the restriction, and in the alternative hereby elects to prosecute the species as illustrated in Figures 1, 2a, 3a, 3b and 3c which reads on claim 1-7, 16-17, 18-29, 31-37 of the present invention.

As set forth in the MPEP, to establish a case for restriction, the PTO must show that two elements are met: "(A) [t]he inventions must be . . . distinct . . .; and (B) [t]here would be a serious burden on the examiner if restriction is not required." (MPEP § 803.) As discussed below, Applicants traverse the restriction between Species on the grounds that one or both of the distinctiveness element and the burden element are not met.

Applicants respectfully traverse the Restriction on the grounds that the Examiner has not

established a *prima facie* case that each of species is distinct one from another. As discussed in the MPEP, "species must be patentably distinct from each other." (MPEP § 806.04(h).) The Restriction fails even to identify any characteristics of the proposed species much less provided any basis for concluding that each of the species is distinct one from another. Absent such an explanation, the Restriction fails to set forth a *prima facie* case for restriction among species. Accordingly, the Restriction dividing the claims into species must be withdrawn.

The PTO has failed to establish the burden element for the identified species. As set forth in the MPEP, "[f]or purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search." (MPEP §§ 803 and 808.02.) With regard to the identified species the PTO has not alleged the need for a separate search. Absent a showing or evidence to support the assertion that the subject matter of the identified species is recognized in the field or industry as divergent, the assertion that the subject matter of the identified species is recognized as divergent must be withdrawn. The PTO has thus not established the burden element for the identified species. For this reason alone, the restriction should be withdrawn.

With regard to the identified species, the PTO has failed to establish both the distinctness element and the burden element necessary to support the restriction.

First, the PTO does not identify differences between the identified species much less provide any analysis or discussion supporting a conclusion that the identified species are distinct. The PTO thus does not establish the distinctiveness element necessary to support a restriction between the identified species. For this reason alone, the restriction between the identified species should be withdrawn.

Second, the PTO does not allege—much less establish—that the identified species have a separate classification or separate status in the art or would require a different field of search. (MPEP §§ 803 and 808.02.) The PTO thus does not establish the burden element necessary to support restriction between the identified species. For this additional reason, the restriction between the identified species should be withdrawn.

DRAWINGS


Additionally, the Examiner indicated that new drawings in compliance with 37 C.F.R. § 1.121(d) were required. Accordingly, Applicant respectfully submits 17 replacement drawing sheets to replace the previously filed 17 drawing sheets.

CONCLUSION

Should there be further questions regarding this election and submission of replacement drawing sheets, the Examiner is respectfully invited to contact the undersigned.

DATED this 13 day of February 2006.

Respectfully submitted,



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